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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ARISHA BYARS, individually and on behalf
of all other similarly situated.

Case No. 5:22-cv-02030-JLS-SHK
Judge: Hon. Josephine L. Staton

Plaintiff,

V.

WHIRLPOOL CORP., a Delaware corporation; and DOES 1 through 10, inclusive,

Defendants.

**NOTICE OF DISMISSAL WITH
PREJUDICE PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 41(a)(1)(A)(i)**

1 TO THE COURT, CLERK AND ALL PARTIES OF RECORD, please take
 2 notice that Plaintiff Arisha Byars (“Plaintiff”) hereby dismisses the instant action
 3 against Defendant Whirlpool Corp. (“Defendant”) pursuant to Rule 41(a)(1)(A)(i) of
 4 the Federal Rules of Civil Procedure *with prejudice* as to the Plaintiff’s individual
 5 claims, and *without prejudice* as to the putative class.

6 Pursuant to Rule 23(e), “the district court should inquire into possible prejudice
 7 from (1) class members’ possible reliance on the filing of the action if they are likely to
 8 know of it either because of publicity or other circumstances, (2) lack of adequate time
 9 for class members to file other actions, because of a rapidly approaching statute of
 10 limitations, (3) any settlement or concession of class interests made by the class
 11 representative or counsel in order to further their own interests.” *Diaz v. Trust*
 12 *Territory of the Pacific Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989).

13 In this instance, the *Diaz* factors weigh in favor of dismissal of Plaintiff’s
 14 individual claims with prejudice. First, it is the Plaintiff’s counsel’s understanding that
 15 this action has not been publicized in any way and as such, the putative class members
 16 are highly unlikely to have knowledge of it, or to have relied upon it in any way.
 17 Similarly, Plaintiff’s counsel is unaware of any other circumstances that may have led
 18 to the putative class’s knowledge of, or reliance upon, this action.

19 Second, the statute of limitations in this action is not approaching. Plaintiff’s
 20 claims arose in July 2022 and as such, based on the statute of limitations alleged in this
 21 action, the statute of limitations shall not run until July 2023. As such, the rights of the
 22 putative class are preserved by the solely individual dismissal of Plaintiff’s claims with
 23 prejudice.

24 Lastly, Plaintiff and her counsel made no settlement or concession of class
 25 interests in order to resolve Plaintiff’s individual claims. Indeed, the resolution reached
 26 between the Parties does not address, affect, or change the putative class’s rights or
 27 claims in any manner.

1 An evaluation of the foregoing *Diaz* factors weigh in favor of dismissal of
2 Plaintiff's individual claims with prejudice, and dismissal of the putative class's claims
3 without prejudice.

4 Respectfully submitted,

5 Dated: February 3, 2023

6 PACIFIC TRIAL ATTORNEYS, APC

7 By: /s/ Scott J. Ferrell

8 Scott. J. Ferrell

9 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2023, I electronically filed the foregoing
**NOTICE OF DISMISSAL WITH PREJUDICE PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 41(a)(1)(A)(i)** with the Clerk of the Court using the
CM/ECF system, which will send notification of such filing via electronic mail to all
counsel of record.

/s/ Scott J. Ferrell
Scott J. Ferrell